

Before the
Federal Communications Commission
Washington, D.C. 20554

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In the Matter of)

Preemption of State and Local Zoning)
and Land Use Restrictions on the Siting,)
Placement and Construction of Broadcast)
Station Transmission Facilities)

MM Docket No. 97-182

TO: The Commission

COMMENTS OF SIMA BIRACH

Sima Birach ("Birach"), by his attorney, hereby comments in support of the rule proposed in this proceeding, which would preempt the regulation by local authorities of the construction of broadcast transmission facilities. In support thereof, it is alleged:

1. By its Notice of Proposed Making ("NPRM"), FCC 97-296, in this proceeding, the FCC proposes a rule which will preempt to the FCC the regulation of the construction of broadcast transmission facilities. The rule is a reasonable one; it does not totally strip local authorities of their ability to regulate such construction; rather, it merely requires that the local authorities act promptly and reasonably, and provides relief where the local authorities do not act promptly and reasonably.

2. Sima Birach is an experienced AM broadcaster. Through various corporate entities, Mr. Birach owns AM broadcast stations in Dearborn Heights, Michigan; Canonsburg,

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Pennsylvania; Valparaiso, Indiana; and Walkersville, Maryland. He is in the process of building a new AM broadcast station at Youngstown, New York, and has applications on file which, if granted, will involve changes in the locations of his two Maryland stations, and extensive tower construction.

3. Birach has been involved in the construction of several broadcast antenna systems. He knows from sad experience exactly how much red tape must be cut, before a single tower can be erected. Sometimes competing broadcasters stir up the local authorities, spreading disinformation to the effect that the towers will interfere with police and fire communications, stop computers from running, etc. Even without the intervention of competitors, however, the local authorities often invent imaginary horrors and use them to block tower construction.

4. A good example of this is at Youngstown, New York, where Mr. Birach presently holds a construction permit for a new AM broadcast station. That station will use a three tower directional antenna system. The local authorities have decreed that no construction shall take place during the Spring and Summer months, lest the construction interfere with the flight activities of migrating birds. They have also decreed that the towers must be completely self-supporting; that there must be no supporting guy wires, lest birds fly into them.

5. Neither Mr. Birach nor his counsel have ever heard of a single case of a bird flying into a guy wire. There are thousands of guyed broadcast towers in this country and, if birds had a proclivity to fly into guy wires, the newspapers would surely be full of reports of mass bird deaths, and the owners of AM broadcast stations would regularly have to remove dead bird carcasses from the areas around the towers. This never happens, but this makes no difference to the local authorities. They really do not want any towers built.

6. Once towers are actually erected, it has been the experience of Mr. Birach that

those who opposed the towers actually find that their opposition was unwarranted. Guyed towers, in particular, have thin cross sections (18 to 24 inches on a face) and are visually unobtrusive. Property used for towers is preserved as farmland and protected against development and such ecologically destructive uses as septic fields and large wells. But no amount of logical reasoning or explanations will satisfy the Nimbys.¹

7. In this proceeding, the FCC proposes reasonable preemption rules to expedite the construction of broadcast transmission facilities. Apparently, the Commission's principal concern is the construction of new facilities to be used for Digital Television (DTV). That is a reasonable objective. Birach urges the Commission, however, not to neglect the needs of the public for service from AM and FM, and conventional TV stations, for which construction permits have already been issued. Each time that the FCC issues a construction permit, it makes a finding that the facilities authorized will serve the public interest, convenience and necessity. Many such permits have been issued and are outstanding, but cannot be implemented because of unreasonable local regulations, based upon unfounded fears that the towers will create everything from cancer to interference with migrating birds and emergency communications.

¹ "Not in my back yard"

8. The FCC and the FAA, between them, have the necessary expertise to know when a broadcast transmission system will create a hazard and when it will not. Development of an efficient nation-wide broadcasting system requires that these agencies preempt the field.

Respectfully submitted,

October 29, 1997

SIMA BIRACH

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By: 

Lauren A. Colby
His Attorney

CERTIFICATE OF SERVICE

I, Traci Maust, a secretary in the law office of Lauren A. Colby, do hereby certify that copies of the foregoing have been sent via first class, U.S. mail, postage, prepaid, this 29th day of October, 1997, to the offices of the following:

Henry L. Baumann, Esq.
National Association of Broadcasters
1771 N Street, N.W.
Washington, D.C. 20036

Traci Maust
Traci Maust